IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12622 of 2003
With
CIVIL APPLICATION No. 8879 of 2004
In
SPECIAL CIVIL APPLICATION No. 12622 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

KARUNASHANKAR M JOSHI & 4 - Respondent(s)

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Appearance :
MS MANISHA L. SHAH, AGP for Petitioner(s)
MR AJ YAGNIK for Respondent(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 2 - 3.
MRS VD NANAVATI for Respondent(s) : 4,
RULE SERVED for Respondent(s) : 5,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 01/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner State

Government has challenged a decision dated 9.12.2002 passed by the Gujarat Affiliated Colleges Services Tribunal in Application No.56/98 filed by respondent No.1 herein.

2. Respondent No.1 was engaged as a Lecturer by respondent No.3 College. In the year 1979, as a surplus Lecturer, the petitioner was sent to Higher Secondary School. The petitioner worked as a surplus teacher in the Higher Secondary School for the period between 1979 and 1986 after which he was once again absorbed in the same college as a Lecturer. The petitioner eventually retired on crossing the age of superannuation on 31.10.96.

3. The case of respondent No.1 is that he was entitled to receive pension from the State Government since the pension scheme was already introduced for the teaching staff of the aided affiliated colleges. The authorities however, did not release the pension and respondent No.1 therefore approached the Gujarat Affiliated Colleges Services Tribunal by filing an application. This application came to be allowed by the impugned judgment dated 9.12.2002.

4. The case of the State Government is that pension scheme was introduced for the teaching staff of the aided

affiliated colleges by a circular dated 15.10.84. In the said circular for the existing staff, option was given whether to switch over to the newly introduced pension scheme or to continue in the then existing provident fund scheme. Such option was to be exercised within the time permitted in the resolution. Upon representations from various quarters, time for exercising such option was extended from time to time. By the resolution dated 10.1.86, three more months were granted and time for exercising the option was extended upto 31.3.86. Thereafter, once again by GR dated 11.10.88, time was extended for a further period of three months. It is, however, the case of the State Government that respondent No.1 did not opt for the pension scheme in response to any of these resolutions. He, therefore, cannot claim pensionary benefits. In short, the case of the Government is that since respondent No.1 never opted to switch over to the pension scheme from the CPF scheme, his request for pension could not have been entertained by the Tribunal.

5. On the other hand, case of respondent No.1 is that though he was covered by the CPF scheme while working as a Lecturer in respondent No.3 college, he was

absorbed in the higher secondary school as a surplus teacher in the year 1979. As a school teacher, an employee did not have any option and the only choice was that of pension scheme. Accordingly, respondent No.1 continued to be governed by the pension scheme available to school teachers and GPF account was accordingly opened in his name. His employer did not make any contribution towards his provident fund. Thus in the year 1986 when he was once again recalled and re-absorbed as a Lecturer, he was already covered by the pension scheme. He, therefore, did not have to exercise a fresh option.

5.1It is pointed out that when the first resolution of 15.10.84 was issued by the State Government, he was not engaged as a college employee as he was a surplus teacher discharging his duties in the higher secondary school. Even if desired to, he could not have opted for the CPF scheme. So was the case when subsequent GR dated 10.1.86 was issued by the State Government. Though it is true that by the time the third GR dated 11.10.88 was circulated, he was already absorbed in the college, he was by then already covered by the pension scheme and did not have to separately opt for it once again.

5.2 It is contended that the Tribunal, therefore, rightly directed the respondents to release the pension in favour of respondent No.1.

6. Having heard the learned advocates appearing for the parties, it appears that though respondent No.1 was covered under the CPF scheme as a Lecturer in respondent No.3 college, he was declared as surplus and absorbed in Higher Secondary School in the year 1979. As a school teacher, there was no CPF scheme applicable and he was covered under the pension scheme. The employer opened the GPF account and there was no contribution by the school towards provident fund of respondent No.1. This would demonstrate that he was availing pension scheme and not CPF scheme while working as a surplus teacher.

7. Upon his re-absorption in the college, there could have been some debate about his automatic re-absorption in the pension scheme. Perhaps, it would have been open for the State Government and the employer to contend that respondent No.1 would continue to be governed by the CPF scheme as was the case prior to his absorption in the school, in the facts of the present case, I find that no such stand can be permitted. When respondent No.1 joined respondent No.3 college as Lecturer in the

year 1986 on re-absorption, the college did not operate the CPF account and made no contribution towards provident fund of the employee. In fact, his GPF account was the one in which his contribution was periodically deposited. Thus even respondent No.3 college has acquiesced in the situation that after re-absorption in the college, respondent No.1 did not have to specify the preference for pension scheme as against the earlier CPF scheme. In that view of the matter, it is now not open for the State Government as well as the college to contend that respondent No.1 was required to separately opt for pension scheme which he did not and that therefore he should be deemed to have continued in the CPF scheme and he was entitled to only provident fund.

8. The problem can be looked from a slightly different angle. As regards extension granted by the Government by the GR dated 11.10.88, what would have happened if no such GR was issued. The entire period during which the Government floated the pension scheme in the year 1984 and granted extension for opting for pension scheme in the year 1986, respondent No.1 was not in the college at all. Subsequently, when he came back to the college, if no further option was available, would it

have been open for the State Government to suggest that for want of having exercised the option, respondent No.1 is not entitled to avail of the pension scheme. To my mind, such a stand would lead to an anomalous situation where similarly situated lecturers would have been given and availed of pension scheme whereas respondent No.1 who was discharging his duties as a teacher and was covered under the pension scheme applicable to the school teachers, would have had no real option to switch over to the pension scheme. I do not think that even the State Government envisaged such a situation. In the facts of the present case, therefore, I find that respondent No.1 was not required to separately opt for pension scheme and his contention that he was automatically covered in the pension scheme is required to be accepted.

9. In the result, I do not find that the Tribunal committed any error in directing payment of pension to respondent No.1. The petition is therefore required to be and is hereby rejected. Rule is discharged. Interim relief is vacated.

10. It appears that the employer's contribution towards provident fund of respondent No.1 made by respondent No.3 college prior to his absorption as a surplus

teacher in the school has remained with the college. It will be open for the Government to require the college to account for the same in accordance with rules.

11. Now that the petition is rejected, it is expected that the pensionary benefits and gratuity payable to respondent No.1 will be released expeditiously.

12. In view of the order passed in the main matter, the Civil Application is disposed of as having become infructuous.

(Akil Kureshi, J.)

(vjn)